IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

RFA.No. 389 of 2006()

AGAINST THE ORDER DATED 06/07/2005 IN IA 2619/02 IN OS.321/1998 of PRINCIPAL SUB COURT,PARAVUR

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: APPELLANTS/PLAINTIFFS:

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1. HABEEBA, D/O.C.USMAN,
AYSHAS, THOTTAKKATTUKARA, ALUVA-683 108.

2. NEBEESA, D/O. USMAN -DO- -DO-.

3. FATHIMAS, D/O. USMAN, -DO- -DO-.

4. SUMMAYA MARIAM, D/O. USMAN, -DO- -DO-.

5. MUHAMMED FALAH, S/O.USMAN, -DO--DO-.

BY ADV. SRI.S.B.PREMACHANDRA PRABHU

RESPONDENTS: DEFENDANTS:

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1. SAFIYA, W/O.C.USMAN,
PEES COTTAGE, XI/288, KADUNGALLOOR PANCHAYATH,
U.C. COLLEGE P.O., ALUVA.

2. SHAMMNA, D/O. USMAN,
PEES COTTAGE, XI/288, KADUNGALLOR PANCHAYATH,
U.C. COLLEGE P.O., ALUVA.

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M. RAMACHANDRAN & A.K. BASHEER, JJ.

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R.F.A.NO.389 OF 2006

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DATED THIS THE 30TH DAY OF NOVEMBER, 2006.

JUDGMENT

Basheer, J.

This appeal is directed against the final decree and judgment passed by the court below in O.S.No.321/1998. The suit was one for partition. The application for passing of final decree was filed by the plaintiffs/appellants.

2. In the final order, the learned judge has observed thus:

> "The respondents appeared and filed counter affidavit. Meanwhile the parties have come to a settlement and accordingly a commissioner was appointed to fix the value of each share instead of effecting partition by metes and bounds as agreed by the parties. Ext.C1 is the report filed by the commissioner.
>
> No serious objection was raised by the parties. I have heard the parties. Accordingly, the final decree is passed on proportionate cost. The report shall form part of the final decree."

Learned counsel for the appellants submits that the observation made by the learned judge that the parties had come to a settlement is not correct. It is also submitted that serious objections were raised against the report of the commissioner. It is pointed out by the learned counsel that in the report the Advocate commissioner had mentioned that he may have to visit the property again

to reckon the mesne profits. Learned counsel contends that this indicates that the Advocate commissioner had not yet completed his assignment.

3. Having heard learned counsel for the appellants and having perused the materials on record, we are of the view that the remedy of the appellants is to move an appropriate application before the court below itself, if according to them, the observations made by the learned judge are not factually correct. With that liberty reserved in favour of the appellants, this appeal is closed. If an application for review is filed by the appellants, it shall be considered by the court below in accordance with law.

The appellants shall pay the balance court fee on the memorandum of appeal within three days from today.

(M.Ramachandran, Judge.)

(A.K. Basheer, Judge.)

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